RM NLRB-5026
(3-80)

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO : Thomas C. Hendrix, Director
Region 17

DATE: September 19, 1984

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

536-2556
536-2560
536-2562
650-5511
650-8811-3347

SUBJECT: Teamsters Local 498
(Loctite Corp.)
Case 17-CB-2917

This case was submitted for advice on the following issues:

(1) Did the Union have a Section 8(b)(1)(A) duty to inform one of its members, upon request, as to how he could revoke his dues checkoff authorization?

(2) If such a duty exists, what is the appropriate remedy for a breach of the duty?

(3) If the Union's version of the facts is credited, should the Union's conduct be alleged as a Section 8(b)(1)(A) violation?

FACTS

On April 3, 1978, employee Charging Party Lee Williams signed a "checkoff authorization and assignment" card authorizing the Employer to deduct union dues from the wages of Williams. It also provided that the checkoff authorization and assignment was irrevocable for a period of one year, or until the termination of the applicable collective-bargaining agreement, whichever occurred first, and that the checkoff authorization automatically renewed itself for one-year periods until the employee provided written notice to the Employer and Union 45 to 60 days prior to the expiration of each one-year period or the applicable collective-bargaining agreement.

On December 9, 1983, Williams approached Peggy Douglas, a secretary in the Employer's office, and asked the proper procedure to withdraw from the Union. 1/ Douglas said that she thought that a written request should be

1/ The Region has determined that all parties considered Williams' request for withdrawal from the Union as a request for the revocation of a dues checkoff authorization rather than an attempted resignation from the Union.

submitted thirty days before Williams' anniversary date with the Employer. When Douglas was unable to locate a copy of Williams' checkoff authorization card, she typed a letter for Williams, dated December 9, 1983, addressed to the Employer and the Union, stating:

> As specified in the assignment agreement, I am hereby serving written notice to Loctite Corporation AGC and Teamsters Union Local 498 that I wish to withdraw my membership in the Teamsters Union Local 498.

It appears that the wording of the letter was determined by Douglas rather than by Williams. Douglas gave copies of this letter to Williams and kept one copy for the Employer.

In the afternoon of December 9, Williams delivered a copy of the letter to the Union office. The office secretary accepted the letter and informed Williams that Jim Votipka, president of the Union, would contact Williams regarding the matter.

A day or two later, Votipka contacted Williams by telephone. The content of the conversation between Williams and Votipka is disputed. Both parties recall Votipka telling Williams that his request was untimely or improper. Williams then recalls specifically asking what the correct procedure was and Votipka specifically refusing to reply. Votipka, however, denies that he was specifically asked and refused to reply. Votipka recalls only Williams asking whether a written request was proper and Votipka responding affirmatively and that the authorization card spoke for itself.

Following this conversation, Williams did not take any further action to revoke his dues checkoff authorization. Nor did Williams ever obtain a copy of his checkoff authorization from either the Union or the Employer. On December 13, Votipka sent Williams a letter iterating that his request had been untimely and reminding him of his continuing obligation to remit dues. Votipka did not attempt to advise Williams of the correct time for revoking his checkoff authorization. The letter was sent by certified mail, but Williams never saw the letter as he did not go to the Post Office to get it. The Employer has continued to deduct Union dues, $19 a month, from Williams' wages.

ACTION

A Section 8(b)(1)(A) complaint should issue, absent settlement, based on the analysis set forth below.

First, the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) by refusing or failing to inform Williams of the correct procedure and time requirements for revoking his dues checkoff.

It is well established that "inherent in a union's duty of fair representation is an obligation to deal fairly with an employee's request for

information" in matters affecting his employment. 2/ Checkoff authorizations are mandatory subjects of bargaining 3/ and, as such, are clearly considered matters affecting employment. Therefore, a union breaches its duty of fair representation when it either refuses or fails to give an employee the information needed to revoke a checkoff or otherwise creates obstacles to the employee's exercise of his Section 7 right of revocation. For example, in Hughes Aircraft Company, 164 NLRB 76 (1967), the Board held that a union had violated Section 8(b)(1)(A) when a shop steward deliberately misled an employee as to the proper date for the submission of a revocation request. In United Food and Commercial Workers, Local 1529 (Kroger Company), Case 26-CB-1849, Advice Memorandum dated September 27, 1982, a union violated Section 8(b)(1)(A) by refusing to answer the inquiries of an employee and his agent about the employee's anniversary date, thus frustrating the employee's attempts to timely revoke his authorization. 4/

In the instant case, Williams' version of his telephone conversation with Votipka is that Votipka refused to tell Williams how to revoke his authorization in a timely manner. Such a specific refusal is sufficient basis for the issuance of a Section 8(b)(1)(A) complaint under the analysis contained in United Food and Commercial Workers, Local 1529 (Kroger Company), supra. Moreover, a violation arose even if Votipka's version of the conversation is credited, since that version clearly indicates that Votipka knew that Williams wanted information needed to revoke his checkoff. 5/ Thus, the Union's defense that it had no obligation to provide such clearly desired information because of the absence of an explicit request is without

2/ Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc.), 226 NLRB 587 (1976); see, e.g., Law Enforcement and Security Officers Local 40B (South Jersey Detective Agency), 260 NLRB 419 (1982); Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association), 236 NLRB 329 (1978), enfd. 606 F.2d 189 (7th Cir. 1979). Moreover, in cases where a union has sought to enforce a union-security provision against an employee, the Board has held "that a union must show that it had dealt fairly with the employee and given him clear notice of what is required of him. Absent such demonstration, the individual's rights must be held paramount and protected." Gloria's Manor Home for Adults, 225 NLRB 1133, 1143 (1976), enfd. 556 F.2d 558 (T) (2d Cir. 1976).

3/ United States Gypsum, 94 NLRB 112, 113 (1951), enfd. in part 206 F.2d 410 (5th Cir. 1953).

4/ See also Newport News Shipbuilding and Dry Dock Company, 253 NLRB 721 (1980), enfd. 663 F.2d 488 (4th Cir. 1981) (union unlawfully required employees wishing to revoke their checkoffs to travel to a union office that was not near the employer's facility and did not maintain convenient hours); International Brotherhood of Electric Workers, Local Union No. 66 (Houston Lighting and Power Company), 262 NLRB 483 (1982) (union frustrated employee's attempts to take steps necessary for revocation under the union's procedures).

5/ [FOIA EXEMPTIONS 6, 7(C), and 7(D)

]

merit. 6/ As the Supreme Court said, in NLRB v. City Disposal Systems, Inc., ___ U.S. ___, 115 LRRM 3193, 3201 (1984), in declaring that an employee alleging a contract violation need not refer specifically to a collective bargaining agreement so long as the nature of the employee's complaint is reasonable clear, ". . . where the participants are likely to be unsophisticated in collective bargaining matters, a requirement that the employee explicitly refer to the collective bargaining agreement is likely to serve as nothing more than a trap for the unwary." 7/ Thus, so long as it can be shown that the Union did not provide the clearly desired information either by refusing to do so, as Williams alleges, or by failing to do so even in the absence of an explicit request, as Votipka claims, it should be alleged that the Union violated Section 8(b)(1)(A) by breaching its duty of fair representation to provide a member with information relevant to his employment status.

Concerning the appropriate remedy for this violation, Williams' revocation of his dues checkoff should be treated as having been valid, even though it was untimely and invalid according to the express terms of the checkoff authorization. Where the Union is responsible for thwarting the employee's attempts to exercise his revocation right, it would be inequitable to allow the Union to benefit from the fruits of its unlawful actions by continuing to receive the employee's dues. This conclusion is consistent with those reached in cases in which the Board has found unlawful a union's enforcement of a valid union-security clause against an employee who has become delinquent in his dues payments where the union has unlawfully failed to inform the employee of his obligations. 8/

In treating Williams' revocation as valid, it first would be argued that the attempted revocation was valid and timely as of December 9, 1983, when Williams delivered his revocation to the Union. The remedy therefore should be the reimbursement of all dues that have been withheld from Williams' wages since December 9, 1983. On the other hand, the Union may forcefully argue that otherwise valid and express time restrictions on checkoff revocations should not be totally nullified. Therefore, it would be argued in the alternative that Williams' attempted revocation was at least timely as of February 1984, 45 to 60 days prior to the April 3 anniversary of his

---

6/ The union has an affirmative obligation to provide information necessary to an employee's employment status even in the absence of a request for the information, so long as the union has reason to believe that the information is relevant. See Local 282, Teamsters (Transit-Mix Concrete Corp.), 267 NLRB No. 187 (1983), enfd. 116 LRRM 3292 (2d Cir. 1984).

7/ See also Local Lodge 758, Machinists (Menasco, Inc.), 267 NLRB No. 73, slip op. at 2, n. 1, ALJD at 27 (1983); Miscellaneous Drivers and Helpers, Local Union No. 610, Teamsters (Browning-Ferris Industries), 264 NLRB 886, 901 (1982).

8/ See, e.g., Philadelphia-Sheraton Corporation, 136 NLRB 888, 896 (1962), enfd. 320 F.2d 254 (3d Cir. 1963); R.H. Macy & Co., Inc., 266 NLRB 858 (1983).

authorization. Under this view, Williams would have made a timely revocation of his authorization if the Union had fulfilled its responsibility to provide the requested information. 9/

H. J. D.

9/ See, e.g., Local 282, Teamsters (Transit-Mix Concrete Corp.), supra (where union breached its duty of fair representation by failing to notify members of arbitration award requiring them to report for shape-up at specified time periods, backpay award to be based upon assumption that employees would have reported for shape-up and would have worked during period, had they known of shape-up requirement).